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EXAMINER	
STANLEY, MARK P	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/798,153	LUDVIG ET AL.	
	Examiner	Art Unit	
	MARK P. STANLEY	2427	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 January 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-22 and 24-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-2, 4-22 and 24-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to the RCE and amendment filed on 12/29/2008 and Declaration under 37 C.F.R. 1.131 and 1.132 filled 1/22/2009.

2. Claims 1-2, 4-22, and 24-28 are pending in the application. Claims 12, 20, 24, and 26 have been newly amended

Request for Continued Examination

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/29/2008 has been entered.

Response to Amendment

4. The Declaration filed on 1/22/2009 under 37 CFR 1.131 and 1.132 has been considered but is ineffective to overcome the immediate references. Under 1.131 when any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity. It is an all or nothing proposition. In the instant

case, applicants do not provide evidence nor assert that the invention or claimed subject matter of the claim is prior to the effective date of the Zigmond reference (6/15/98). Therefore, the affidavit under 1.131 is clearly insufficient.

Response to Arguments

5. Applicant's arguments filed 12/29/2008 with respect to claims 1-2, 4-22, and 24-28 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

7. Claims 20-22, 26-28 rejected under 35 U.S.C. 102(a) as being anticipated by Zigmond et al. (US 6,698,020 A1 hereinafter Zigmond).

Regarding claim 20, Zigmond discloses "a client device having a unique client device ID, the client device comprising:" (Fig. 5)

"a first tuner configured to tune to a first network channel over which broadcast television program content is received;" (col. 8 lines 29-33, Fig. 4 item 52, tuning to and receiving of television programming from broadcast content provider)

"a second tuner configured to tune to a second network channel over which broadcasted television subscriber profile data is received;" (col. 10 lines 52-55, receiving of profile data via 3rd party source)

"a subscriber profile data repository configured to maintain consumer profile data comprising a unique subscriber ID and the unique client device ID, wherein the client device is associated with an individual; and" (col. 9 lines 56-62, Fig. 5 item 82, storing profile data associated uniquely with subscriber and client device ID via login system)

"a profile filter configured to direct the first tuner to tune to an alternate network channel over which a targeted advertisement may be received when a consumer profile characteristic of the consumer profile data associated with the targeted advertisement matches the television subscriber profile data, wherein the consumer profile characteristic of the consumer profile data comprises the unique client device ID" (col. 11 lines 42-49, col. 15 line 66 – col. 16 line 19, based on matching tuning to the appropriate data stream carrying the targeted advertisement).

Regarding claims 21, Zigmond discloses "the client device as recited in claim 20 wherein the first network channel comprises an in-band network channel" (col. 15 line 66 – col. 16 line 19).

Regarding claim 22, Zigmond discloses "the client device as recited in claim 20 wherein the second network channel comprises an out-of-band network channel" (col. 15 line 66 – col. 16 line 19).

Regarding claim 26, Zigmond "one or more computer-readable media comprising computer-readable instructions which, when executed, configure a client device computer system to perform a method, the method comprising:

receiving consumer profile data associated with a broadcast television system subscriber, wherein based on a client device ID, the client device determines, when the client device ID is associated with the client device and the client device acquires the associated consumer profile data: (col. 9 lines 41-62 consumer profile data determined by association of user login with client ID)

receiving a message comprising a consumer profile characteristic associated with a targeted advertisement scheduled for broadcast;" (col. 11 lines 31-42, col. 11 line 66 - col. 12 line 9, criteria received via advertisers or content providers)

"determining whether the consumer profile data associated with the broadcast television system subscriber matches the consumer profile characteristic associated with the targeted advertisement; and" (col. 11 lines 42-49 matching of consumer profile data with ad selection criteria)

"in an event that the consumer profile data matches the consumer profile characteristic, tuning from a first data stream to an alternate data stream over which the targeted advertisement is to be broadcast" (col. 11 lines 42-49, col. 15 line 66 – col. 16 line 19, based on matching tuning to the appropriate data stream carrying the targeted advertisement)

Regarding claim 27, Zigmond discloses "the one or more computer-readable media as recited in claim 26 wherein the message further comprises a transport ID that identifiers the alternate data stream" (col. 15 line 66 – col. 16 line 19).

Regarding claim 28, Zigmond discloses "the one or more computer-readable media as recited in claim 26 wherein the message further comprises a duration associated with the targeted advertisement, and wherein the method further comprises:

after being tuned to the alternate data stream for a time period indicated by the duration, tuning back to the first data stream" (col. 15 line 66 – col. 16 line 29).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1-2, 4-11 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond et al. (US 6,698,020 A1 hereinafter Zigmond) in view of Eldering (US 6,216,129 B1 hereinafter '129).

Regarding claim 1, Zigmond teaches an ad insertion device (Fig. 3 item 60, Fig. 5 item 80) which stores viewer and system information (item 82) and processes the data via correlation with stored ads in an ad repository (item 86) to determine an ad for

insertion into tv programming via a switch (item 90), where viewer and system information data includes the individual's consumer purchase related data including spending habits, anticipated major purchases, and recorded online purchases (col. 10 lines 22-27 and 61-63, col. 13 lines 7-11).

But, while Zigmond teaches the use of a login system to properly and uniquely identify the individual with their corresponding consumer data and further associate a unique client device with the individual and their consumer data upon login (col. 9 lines 56-65) and while it would be necessary to use some form of identification to properly relate an individuals online purchases with that specific individual when storing the consumer data on that given individual to be used upon login, Zigmond does not explicitly state the use of a membership card such that "the consumer data comprises data collected by a retail store in association with a membership card that is assigned to the individual and comprises a unique consumer ID".

However, '129 does teach an advertisement selection system which correlates subscriber profiles with ad characterizations to target advertisements toward the given subscriber, where the subscriber profile does include point of purchase data at places such as grocery stores and department stores, which is then transmitted to the advertisement selection system via internet or private network (col. 6, lines 33-51). The consumer ID to uniquely identify the subscriber and the purchases can be a credit card (col. 8, lines 13-17), which is essentially identical to a membership card in the purpose of tracking and identifying a subscriber's purchases at points of purchases.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Zigmond for targeting advertisements to a specific individual in a household via identifying the individual upon login to correlate the specific individuals consumer data and associated login device with the teachings of '129 to uniquely identify an individuals consumer data via use of a membership card. One would have been motivated to do so for the purpose of improved tracking and retrieval of data on a subscriber for improved targeting of advertisements through the use of a card when the subscriber performs activities at associated retail stores.

Regarding claim 2, Zigmond and '129 disclose "the method as recited in claim 1 wherein the individual comprises a subscriber to a broadcast television system" (see Zigmond col. 13 lines 49-64, the viewer is the subscriber).

Regarding claim 4, Zigmond and '129 disclose "the method as recited in claim 1 wherein the consumer data comprises an indicator of a vendor associated with a product that the individual has purchased" (see '129, col. 1 lines 28-32, col. 8 lines 56-59).

Regarding claim 5, Zigmond and '129 disclose "the method as recited in claim 1 wherein the consumer data comprises an indicator of a category associated with a product that the individual has purchased" (see '129, col. 8 lines 56-59).

Regarding claim 6, Zigmond and '129 disclose "the method as recited in claim 1 wherein the processing comprises: accessing the consumer data associated with the individual; and generating a profile associated with the individual based on the consumer data, such that the profile indicates a product category associated with a product purchased by the individual" (see '129, col. 6 lines 26-51, a profile for correlating with ads is generated using consumer data associated with the individual)

Regarding claim 7, Zigmond and '129 disclose "the method as recited in claim 6 wherein the product category is selected from a group of product categories comprising frozen foods, soft drinks, snack foods, cereals, diet foods, personal hygiene, and dental hygiene" (see '129, col. 6 lines 33-41).

Regarding claim 8, the claim is rejected for the same reasoning as claim 4 above.

Regarding claim 9, Zigmond and '129 disclose "the method as recited in claim 1 wherein the targeting comprises:

associating a consumer profile characteristic with an advertisement to be targeted;" (see Zigmond col. 12 lines 15-24 ads are assigned parameters for associating with consumer profile data)

"broadcasting data identifying the consumer profile characteristic associated with the advertisement to be targeted to enable a client device to determine whether or not to tune to the targeted advertisement; and" (see Zigmond col. 12 lines 15-32)

broadcasting in a first data stream a default, non-targeted advertisement, while simultaneously broadcasting in a second data stream the advertisement to be targeted" (see Zigmond col. 7 lines 30-38, col. 15 line 66-col. 16 line 25, Fig. 5, tv programming with default ads are broadcast to item 90, while targeted ads may simultaneously be broadcast to item 84, where item 88 determines whether to switch from the tv programming with default ad to the broadcast targeted ad, where the ads are streamed and ad repository is removed)

Regarding claim 10, the claim is rejected for the same reasoning as claims 4 and 5 above.

Regarding claim 11, the claim is rejected for the same reasoning as claim 1 above, where both Zigmond and '129 disclose the method of claim 1and the use of computer-readable medium with executable code for performing the method of claim 1.

Regarding claim 24, Zigmond discloses "one or more computer-readable media comprising computer-readable instructions which, when executed, cause a computer system to:

associating a consumer profile characteristic with a targeted advertisement" (col. 11 lines 31-42, col. 11 line 66 - col. 12 line 9, criteria received via advertisers or content providers ad selection criteria, ad selection criteria uniquely associated with advertisements)

"upon detection of an advertisement avail that is to include a targeted advertisement, generating a message that identifies the consumer profile characteristic that is associated with the targeted advertisement, a duration of the targeted advertisement, and a transport ID that identifies a data stream over which the targeted advertisement is scheduled to be broadcast; and" (col. 11 lines 42-49, col. 15 line 66 – col. 16 line 19)

"broadcasting the message over a network to one or more client devices, wherein based on a client device ID, each client device determines when the client device ID is associated with the client device and the client device acquires the associated consumer profile" (col. 9 lines 56-62, Fig. 5 item 82, Fig. 5, retrieving profile data from viewer and system information item 82 unique to client ID and used matching with received ad selection criteria, ad selection criteria uniquely associated with advertisements).

But, while Zigmond teaches the use of a login system to properly and uniquely identify the individual with their corresponding consumer data and further associate a unique client device with the individual and their consumer data upon login (col. 9 lines 56-65) and while it would be necessary to use some form of identification to properly relate an individuals online purchases with that specific individual when storing the

consumer data on that given individual to be used upon login, Zigmond does not explicitly state the use of a membership card such that "the consumer data comprises data collected by a retail store in association with a membership card that is assigned to the individual and comprises a unique consumer ID".

However, '129 does teach an advertisement selection system which correlates subscriber profiles with ad characterizations to target advertisements toward the given subscriber, where the subscriber profile does include point of purchase data at places such as grocery stores and department stores, which is then transmitted to the advertisement selection system via internet or private network (col. 6, lines 33-51). The consumer ID to uniquely identify the subscriber and the purchases can be a credit card (col. 8, lines 13-17), which is essentially identical to a membership card in the purpose of tracking and identifying a subscriber's purchases at points of purchases.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Zigmond for targeting advertisements to a specific individual in a household via identifying the individual upon login to correlate the specific individuals consumer data and associated login device with the teachings of '129 to uniquely identify an individuals consumer data via use of a membership card. One would have been motivated to do so for the purpose of improved tracking and retrieval of data on a subscriber for improved targeting of advertisements through the use of a card when the subscriber performs activities at associated retail stores.

Regarding claim 25, Zigmond and '129 disclose "the one or more computer-readable media as recited in claim 24, wherein the method further comprises:

simultaneously broadcasting a default advertisement on a first data stream and the targeted advertisement on a second data stream" (see Zigmond col. 17 lines 5-9).

10. Claims 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering et al. (US 2004/0148625 A1 hereinafter Eldering) in view of Aras et al. (US 5,872,588 hereinafter Aras), Eldering (US 6,216,129 B1 hereinafter '129), and Saam (US 2003/0106070 hereinafter Saam).

Regarding claim 12, Eldering discloses "a system comprising:

a profiling server configured to generate consumer profiles associated with broadcast television system subscribers;" ([0030]-[0031], Fig. 1, item 108 the subscriber characterization module)

"a targeting server configured to maintain consumer profile characteristics in association with targeted advertisements; and" ([0030]-[0031], Fig. 1, item 110 the correlation module determines related ads based on items 108 and 102, the ad and subscriber characterization modules)

"a broadcast transmitter configured to broadcast consumer profile data and targeted advertisements over a network to multiple client devices" ([0030]-[0031], [0033], Fig. 1, item 114 the ad insertion module handles transmission of targeted advertisements, [0033] describes giving the subscriber access to their profile data, and).

But, Eldering does not explicitly state "multiple client devices each having a unique client device ID, wherein each client device comprises a subscriber profile data

repository configured to maintain consumer profile data comprising a unique subscriber ID and the unique client device ID" where a unique consumer ID and device ID are used to determine an association with an individual and as a basis for determining when consumer profile data includes the client device ID for acquiring of the targeted advertisement nor the use of a membership card assigned to the individual that comprises a unique consumer ID.

However, Aras teaches collecting data on a subscriber via the subscriber's client device for targeting of advertisements (col. 6 line 32-36), where multiple client devices (Fig. 4 item 111) each storing a unique subscriber ID and a unique client device ID stored (col. 17 lines 32-36) are used for transmitting collected data on the subscriber stored on the device upstream (col. 17 line 57- col. 18 line 9, Fig 14, item 1407 stored subscriber data with item 1403 the unique subscriber id and item 1401 the unique client device ID are transmitted upstream).

Further, Saam teaches receiving broadcast data with consumer profile data ([0034], Fig. 2 item 210) given consumer profile data containing a client device ID (items210a receiver ID) which the client device determines via packet data select & parser (Fig. 3 item 308) whether the client device is to acquire the targeted advertisement contained with the consumer profile data (item 210a portion after receiver ID) in the broadcast data based on the contained client device ID of the broadcast data and the client device ID (item 306) of the client device ([0039]).

Further, '129 does teach an advertisement selection system which correlates subscriber profiles with ad characterizations to target advertisements toward the given

subscriber, where the subscriber profile does include point of purchase data at places such as grocery stores and department stores, which is then transmitted to the advertisement selection system via internet or private network (col. 6, lines 33-51). The consumer ID to uniquely identify the subscriber and the purchases via credit card (col. 8, lines 13-17), which acts essentially identical to a membership card in the purpose of tracking and uniquely identifying a subscriber and corresponding purchases.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Eldering for targeting advertisements via profiling server and targeting server with the teachings of Aras for identifying specific subscribers and client device IDs when using multiple client devices, with the teachings of '129 for acquiring subscriber profile data via membership card, and with the teachings of Saam for targeting and extracting of advertisements based on unique client device IDs. One would have been motivated to do so for improving ad targeting via providing means to uniquely identifying a subscriber ID with a device ID out of multiple client devices available and further deliver a targeted ad for extraction by use of a unique device ID (see Saam [0034] benefits of uniquely identifying entities receiving ads), and to further improve targeting via additional means of collecting profiling data other than information directly attaining from the receiver via use of membership card tracking purchase habits.

Regarding claim 13, Eldering, Aras, '129, and Saam disclose "the system as recited in claim 12 wherein the profiling server comprises: a profiling user interface

configured to enable a user to enter rules that define how the profiling server communicates with a customer loyalty data repository from which consumer purchase data can be extracted" (see Eldering [0037], [0058]-[0059], Fig. 1, where the profiling server and customer loyalty data repository operations are contained within item 108 the subscriber characterization module handled by the profiler and operator).

Regarding claim 14, Eldering, Aras, '129, and Saam disclose "the system as recited in claim 13 wherein the profiling user interface is further configured to enable a user to indicate specific values that may be used in defining a subscriber profile" (see Eldering [0064]-[0065], Fig. 1, Fig. 5, where the user determines specific values for the subscriber characterization vector to determine correlation between the advertisements and the subscriber).

Regarding claim 15, Eldering, Aras, '129, and Saam disclose "the system as recited in claim 14 wherein the specific values comprise at least one of a product vendor and a product category" (see Eldering [0037]-[0039], [0058]-[0059], Fig. 1, where the subscriber data can include purchase records and product preferences, a vendor and category associated with a product purchase and tracked in the product preferences and purchase record).

Regarding claim 16, Eldering, Aras, '129, and Saam disclose "the system as recited in claim 12 wherein the profiling server comprises: a subscriber profile data

repository configured to maintain consumer profile data associated with subscribers to a broadcast television system" (see Eldering [0032], Fig. 1, item 108 the subscriber characterization module performs the operations of the subscriber profile data repository).

Regarding claim 17, Eldering, Aras, '129, and Saam disclose "the system as recited in claim 12 wherein the targeting server comprises: a targeting user interface configured to enable a user to specify consumer profile characteristics to be associated with targeted advertisements" (see Eldering [0038]-[0039], Fig. 1, item 102 the ad characterization module, where the user is the advertiser).

Regarding claim 18, Eldering, Aras, '129, and Saam disclose "the system as recited in claim 12 wherein the targeting server comprises: a multicast message generator configured to generate a message comprising: a transport ID that identifies a data stream over which a particular targeted advertisement is scheduled to be broadcast; a duration of the particular targeted advertisement; and a consumer profile characteristic associated with the particular targeted advertisement" (see Eldering [0075]-[0076], [0078], Fig. 9 where an ad is given an available slot in a data stream for a set duration to be inserted by item 114 the ad insertion module).

Regarding claim 19, Eldering, Aras, '129, and Saam disclose "the system as recited in claim 18 wherein the broadcast transmitter is further configured to broadcast

the message that is generated by the multicast message generator" (see Eldering [0090]).

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK P. STANLEY whose telephone number is (571)270-3757. The examiner can normally be reached on 8:00AM - 5:00PM Mon-Fri EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Beliveau can be reached on (571) 272-7343. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark P Stanley/

Examiner, Art Unit 2427

/Scott Beliveau/
Supervisory Patent Examiner, Art Unit 2427